



Senate

General Assembly

File No. 519

January Session, 2019

Senate Bill No. 765

Senate, April 8, 2019

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT ENSURING FAIR AND EQUAL PAY FOR EQUAL WORK.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-76 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) The Labor Commissioner shall carry out the provisions of section
4 31-75, as amended by this act, either upon complaint or upon the
5 commissioner's own motion. For this purpose, the commissioner, or
6 the commissioner's authorized representative, may enter places of
7 employment, inspect payrolls, investigate work and operations on
8 which employees are engaged, question employees and take such
9 action as is reasonably necessary to determine compliance with section
10 31-75, as amended by this act. At the request of any employee who has
11 received less than the wage to which the employee is entitled under
12 section 31-75, as amended by this act, the commissioner may take an
13 assignment of such wage claim in trust and may bring any legal action
14 necessary to collect such claim. In any action brought by the
15 commissioner, the employer who violates the provisions of section 31-

16 75, as amended by this act, may be found liable to the employee or the
17 employees affected for the difference between the amount of wages
18 paid and the maximum wage paid any other employee for equal work,
19 compensatory damages and, if the violation is found to be intentional
20 or committed with reckless indifference to the employee's or
21 employees' rights under section 31-75, as amended by this act, punitive
22 damages. Any agreement to work for less than the wage to which such
23 employee is entitled under section 31-75, as amended by this act, shall
24 not be a defense to such action.

25 (b) Unless and except to the extent that a wage claim has been
26 assigned to the commissioner pursuant to subsection (a) of this section,
27 an action to redress a violation of section 31-75, as amended by this act,
28 may be maintained in any court of competent jurisdiction by any one
29 or more employees. Any agreement to work for less than the wage to
30 which such employee is entitled under section 31-75, as amended by
31 this act, shall not be a defense to such action. An employer who
32 violates section 31-75, as amended by this act, may be found liable for
33 the difference between the amount of wages paid and the maximum
34 wage paid any other employee for equal work, compensatory
35 damages, attorney's fees and costs, punitive damages if the violation is
36 found to be intentional or committed with reckless indifference to the
37 employee's or employees' rights under section 31-75, as amended by
38 this act, and such legal and equitable relief as the court deems just and
39 proper.

40 (c) An employer may file a motion in any court of competent
41 jurisdiction to disallow an award of compensatory and punitive
42 damages. The court shall grant the motion if the employer
43 demonstrates, by a preponderance of the evidence, that the employer
44 (1) completed, within three years before the date that the employee
45 filed such action, an equal pay analysis of the employer's pay practices
46 in good faith that was reasonable in detail and scope in light of the size
47 of the employer; and (2) eliminated the wage differentials for the
48 plaintiff. If the court grants the motion, the court may award back pay
49 only for the two-year period immediately preceding the filing of the

50 action and may award costs and reasonable attorney's fees, but may
51 not award compensatory or punitive damages. Evidence of an equal
52 pay analysis undertaken in accordance with this subsection shall be
53 inadmissible in any other proceeding.

54 [(c)] (d) For purposes of this section, discrimination in compensation
55 under section 31-75, as amended by this act, occurs when a
56 discriminatory compensation decision or practice is adopted, when an
57 individual is subject to a discriminatory compensation decision or
58 practice, or when an individual is affected by application of a
59 discriminatory compensation decision or practice, and shall be deemed
60 to be a continuing violation each time wages, benefits or other
61 compensation is paid, resulting in whole or in part from such a
62 decision or practice.

63 [(d)] (e) No action shall be brought or any prosecution instituted for
64 any violation of section 31-75, as amended by this act, except within
65 two years after such violation or any act described in subsection [(c)]
66 (d) of this section, or within three years if such violation is intentional
67 or committed with reckless indifference.

68 Sec. 2. Subsection (b) of section 31-75 of the general statutes is
69 repealed and the following is substituted in lieu thereof (*Effective*
70 *October 1, 2019*):

71 (b) If an employee can demonstrate that his or her employer
72 discriminates on the basis of sex by paying wages to employees at the
73 employer's business at a rate less than the rate at which the employer
74 pays wages to employees of the opposite sex at such business for equal
75 work on a job, the performance of which requires equal skill, effort and
76 responsibility, and which are performed under similar working
77 conditions, such employer must demonstrate that such differential in
78 pay is made pursuant to (1) a seniority system, provided time spent on
79 leave due to a pregnancy-related condition or protected family and
80 medical leave shall not reduce seniority; (2) a merit system; (3) a
81 system which measures earnings by quantity or quality of production;
82 or (4) a differential system based upon a bona fide factor other than

83 sex, such as education, training or experience. Said bona fide factor
84 defense shall apply only if the employer demonstrates that such factor
85 (A) is not based upon or derived from a sex-based differential in
86 compensation, and (B) is job-related and consistent with business
87 necessity. Such defense shall not exist where the employee
88 demonstrates that an alternative employment practice exists that
89 would serve the same business purpose without producing such
90 differential and that the employer has refused to adopt such
91 alternative practice.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	31-76
Sec. 2	<i>October 1, 2019</i>	31-75(b)

LAB *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill makes various adjustments with regard to employer defenses and potential redress in gender wage discrimination lawsuits. This does not result in any fiscal impact to the state or municipalities.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**SB 765*****AN ACT ENSURING FAIR AND EQUAL PAY FOR EQUAL WORK.*****SUMMARY**

This bill changes how an employer can defend itself in gender wage discrimination lawsuits by (1) prohibiting employers from counting certain types of leave against an employee's seniority if the employer uses a seniority system to defend its wage differences and (2) allowing an employer to reduce certain damages in such suits by completing an equal pay analysis and meeting certain other requirements.

The law allows employees (or the labor commissioner) alleging gender wage discrimination to sue employers for lost wages, compensatory damages, attorney's fees, and in some instances, punitive damages. Employers may defend themselves by showing that their differences in pay are based on seniority or certain other factors (e.g., job-related education or experience). Under the bill, an employer may only use a seniority system to defend its pay differences if an employee's time spent on leave due to a pregnancy-related condition or protected family and medical leave does not reduce the employee's seniority. (The bill does not specify how long the leave may last or further define pregnancy-related conditions.)

The bill also allows an employer to file a motion in any court of competent jurisdiction to disallow the compensatory or punitive damages awarded in such a suit. The court must grant the motion if the employer shows by a preponderance of evidence that it (1) eliminated wage differentials for the plaintiff and (2) completed an equal pay analysis of its pay practices within three years before the suit was filed. The equal pay analysis must have been performed in good faith and in reasonable detail and scope in light of the employer's size.

Under the bill, it cannot be admitted as evidence in any other proceeding.

If the employer's motion is successful, the court may award the employee back pay only for the two-year period immediately preceding the suit's filing, plus costs and reasonable attorney's fees, but it may not award compensatory or punitive damages.

EFFECTIVE DATE: October 1, 2019

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 11 Nay 1 (03/21/2019)